

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

v.

ALPINE COUNTY UNIFIED SCHOOL
DISTRICT,

OAH CASE NO. 2012100284

ALPINE COUNTY UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2012080276

ORDER (1) GRANTING DISTRICT'S
MOTION TO BIFURCATE, AND (2)
DENYING DISTRICT'S MOTION TO
DISMISS

On October 10, 2012, the Alpine County Unified School District (District) filed (1) a motion to bifurcate the proceedings if the above-referenced matters were consolidated, and (2) a motion to dismiss Student's due process hearing request (complaint). These matters were ordered consolidated on October 11, 2012. Student responded to these motions on October 12, 2012.

In these consolidated cases, Student's complaint alleges District failed to provide or offer Student a free appropriate public education (FAPE), from March 2012 through the 2012-2013 school year. District's complaint alleges that it appropriately implemented Student's individualized education program (IEP) from a prior school district, and offered a FAPE for the 2011-2012 and 2012-2013 school years.

Motion to Bifurcate

District contends that it has no responsibility for Student's special education program because neither Student nor his parents resided within the boundaries of District during the periods at issue. District moves to bifurcate the consolidated cases to have the issue of residency heard and decided before the issue of whether District was, or is, responsible for providing Student with a free appropriate public education (FAPE). Student does not oppose District's motion.

California Education Code 56501, subdivision (a), provides that the appropriate agency party in a special education due process hearing is the local educational agency involved in the educational decisions regarding the child. That agency is determined by the residency of the pupil. (Ed. Code, §§ 48200, 56028.) If the local educational agency is not the district of Student's residency, the action has been brought against the wrong party.

Federal and state law pertaining to special education due process administrative proceedings do not contain specific references to the procedure for bifurcating issues at trial. Such authority resides in the discretion of the administrative law judge, provided the separate hearings are conducive to judicial economy or efficient and expeditious use of judicial resources. (See Gov. Code, § 11507.3, subd. (b).)

The issue of residency is a threshold jurisdictional issue which can be efficiently resolved in an evidentiary proceeding that should not take more than one day, and would be limited to evidence of Student's residence, and District's participation in the IEP process, or responsibility to participate in the IEP process, from March 2012 through the time of filing the complaints. The prompt determination of the issue of residency would also potentially further judicial economy by reducing or eliminating the number of witnesses, and time for witness examination and cross-examination on issues related to the offer of FAPE, if District is determined not to be the agency responsible for providing a FAPE to Student during all or a portion of the school years at issue. Therefore, District's motion to bifurcate is granted. The parties shall be prepared to discuss a bifurcated hearing schedule at the time of the prehearing conference.

Motion to Dismiss

District moves to dismiss Student's complaint as failing to sufficiently allege Student's address of residence, as required by 34 C.F.R. § 300.508(b)(2) and Ed. Code section 56502, subd. (c)(1)(A).¹ In addition, District contends that the Office of Administrative Hearings (OAH) lacks jurisdiction over District because (i) Student's parent has moved to an address outside District boundaries, and (ii) Student has enrolled in another public school district. District submits the declaration of counsel attaching a letter requesting address clarification from Student's mother to which no response was received, and unauthenticated and illegible maps printed from the websites for a visitor's board and a broadband provider, neither of which appear to reference to District boundaries.

As to District's contention that the complaint is not sufficiently alleged, OAH is required to treat Student's denial of FAPE claims as sufficient because District did not file an notice of insufficiency. A complaint is deemed sufficient unless a party notifies OAH and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements. (20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).)

¹ Student's complaint alleges a Post Office box address.

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc....), special education law does not provide for a summary judgment procedure. Here, District's motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits, as well as on speculative, irrelevant and inadmissible evidence of residency and District boundaries. Accordingly, the motion is denied. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

Dated: October 17, 2012

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings